

Town of Sandwich
THE OLDEST TOWN ON CAPE COD



Board of Appeals

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Minutes
May 14, 2019

TOWN CLERK
TOWN OF SANDWICH

JUN 12 2019

1 H 30 M P M
RECEIVED & RECORDED

6 p.m.
Upper Meeting Room
270 Quaker Meetinghouse Road

Present: Christopher Neeven, Chair; James Killion, Vice-Chair; Robert Jensen; Erik Van Buskirk; and Timothy O'Neill

Absent: Gerald Nye and Chase Terrio

Also Present: Brendan Brides, Building Commissioner; Ralph Vitacco, Director of Planning & Economic Development; Leanne Drake, Assistant Town Planner; Katherine Laughman, Town Counsel; and Maureen McCabe, Sr. Administrative Assistant

Mr. Neeven opens the meeting with the Pledge of Allegiance. In addition, he asks anyone who is planning to speak tonight to include their name on the sign-in sheet.

Approval of Minutes

Mr. Jensen motions to accept the minutes of the meeting held April 9, 2019, as written. Mr. O'Neill seconds. The vote is unanimous.

Old Business

There is no old business to discuss.

New Business

- 0 Pocasset Road and 0 Shawme Road, Map 37 Parcels 1&2 – The Adventure Park at Heritage Museums and Gardens, LLC – Special Permit

Mr. Neeven reads the Public Hearing notice into the record. Mr. Jensen motions to open the Public Hearing. Mr. Killion seconds. The vote is unanimous. Mr. Neeven reads the following comment memos into the record:

- Memo to Christopher Neeven, Chair from Sam Jensen, Assistant Town Engineer re: Petition 19-04, Application for a Special Permit, 0 Pocasset Road & 0 Shawme Road, Parcels 1 & 2 on Assessors Map 37, dated May 13, 2019
- Email to Maureen McCabe from David Mason re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated May 9, 2019

- Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated May 1, 2019
- Memo to Christopher Neeven, Chairman Board of Appeals from Joshua Wrigley, Assistant Director, Department of Natural Resources re: Conservation Commission comments for Special Permit #19-04 for the addresses located at 0 Pocasset Road & 0 Shawme Road, Heritage Museums, Adventure Park, dated April 26, 2019
- Email to Maureen McCabe from Sean Miller re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated April 29, 2019

Mr. Neeven acknowledges that the Board has received many letters outside of the correspondence listed above. All Board members are in receipt of these letters.

Eliza Cox, Esq. introduces herself and her team to the Board. Also present at the table with Eliza is Anne Scott-Putney, President and CEO of Heritage Museums & Gardens and Bahman Azarm, CEO of Outdoor Adventures. Attorney Cox tells the Board there is a long history with this which she does not plan to get into, however, if the Board has questions she will be happy to answer them. Attorney Cox states that she will keep her presentation focused on what is before the Board, mainly demonstrating that the Adventure Park meets the Special Permit criteria for an outdoor recreational facility under the Town's Zoning By-Law. A PowerPoint presentation has been prepared and Attorney Cox tells the Board she will go through the slides. In addition, a copy of the slides will be provided to them.

Attorney Cox gives the Board an overview of the property which is the subject of the application and is owned by Heritage Plantation of Sandwich, Inc. Collectively the two parcels consist of about 35.37 acres. The closest neighbors and development to the Adventure Park are the Shawme Crowell State Forest which is a 700 acre camp. The forest is an outdoor use. It includes six yurts which can be rented out for overnight accommodation. The immediate proximity also includes Heritage Museums & Gardens. Heritage's main entrance is approximately 850 feet from the location of the Adventure Park. The One Hundred Acre School is approximately 980 feet from the Adventure Park. The maintenance building for Heritage is on the subject property and is about 570 feet from the same parcel as the Adventure Park. The next closest land use is Route 6 which is approximately 685 feet away.

The proposed layout which depicts the proposed conditions varies only slightly from what exists now. Attorney Cox talks about the existing enter only curb cut off of Shawme Road into the parking area. This was approved by the Town of Sandwich in March 2016. To exit the property the driveway onto Pocasset Road is used. Appropriate signage delineates the entrance and exit. The project proposes 105 striped parking spaces all of which are at least 100 feet off of Shawme Road and Pocasset Road. Five new paved handicapped parking spaces are being proposed. Two yurts are being proposed both 25 feet in diameter. Presently there are two yurts on the site now which are on a deck structure. That deck structure is proposed to be removed. One of the existing yurts is larger; the proposal is to reduce the size of one of the existing yurts so that both yurts will be the same size as the smaller of the two which exist now. Each will be on their own decking structure. The area of the yurts will be 452 square feet. Including the decking each will amount to 499 square feet. There is a starting platform

which is about 280 square feet that is outside the 100 foot setback. This platform has fixed footings in the ground and is how the course is entered. Attorney Cox talks about plantings which have been installed over the last two years on the frontage of Shawme Road to help screen the parking area and ropes course.

Attorney Cox tells the Board the Adventure Park is a challenge course and cites the 520 CMR 5.01(2) definition. She explains that the park has five elevated courses, some which have a higher degree of difficulty than others. She goes on to tell the Board that she would like to address some of the public comment about the five courses. Comments and concerns have been heard about potential future expansion and apprehension that, if permitted, additional courses may be constructed in the future. She explains that given the nature of this Special Permit application this is something that the Board can condition. The applicant fully expects that as a condition of approval the Board would require that the project be constructed and operated in accordance with the plans that have been submitted which show five elevated courses. This condition would prevent the ability to add additional courses unless the applicant comes back before the Board for a modification. Reservations are required to use the course. This allows the staff to manage the number of climbers. A reservation system also manages traffic flow. 2 ½ hours on the course includes a safety orientation. 15-20 people start every 30 minutes and the total capacity of the course at any one time is 120. Attorney Cox tells the Board this is not an amusement park. This term is not defined by the Town's Zoning By-Law but it is defined in 520 CMR 5.01(2). A challenge course is a type of amusement device, not an amusement park. Attorney Cox cites 520 CMR 5.01(2). She disagrees with the comment that each element is an amusement device and again references 520 CMR 5.01(2). The Commonwealth of Mass has issued one challenge course license for this facility that lists 69 elements which is not, by definition, an amusement park under the regulations. Attorney Cox reads aloud the state's definition of a "participant." She tells the Board a participant is unique to someone engaging in a challenge course. She explains to the Board what constitutes a "rider". She tells them someone is either a participant in a challenge course or a rider as it relates to other amusement devices. There is a distinction in terminology. The Adventure Park is a challenge course and not an amusement park.

Attorney Cox tells the Board she will discuss what the Adventure Park is under the Town's Zoning By-Law. Reading from the By-Law Attorney Cox defines "Outdoor Recreation Facility" and "Recreation Facility." Attorney Cox references Sections 4150 and 4151. She tells them the key distinguishing features of an outdoor recreational facility are small scale, and it must be a community recreation facility. Attorney Cox introduces Anne Scott-Putney.

Ms. Scott-Putney tells the Board the challenge course is a strong fit with Heritage's mission. She talks about the benefits the challenge course offers to the community. For example, discounts to school groups, sports teams who come regularly for exercise and team building and first responders across the Cape are allowed free admittance two days during the year. In addition, Heritage offers free memberships to all of its neighbors every year for two people.

Attorney Cox discusses the six step Special Permit criteria for an Outdoor Recreation Facility which is contained in Section 4151. The project is located on two lots. The proposed plan depicts three structures all less than 500 square feet. She tells the Board

there are no concession stands in permanent structures. There are some items that are sold within one of the yurts, for example, water, Gatorade and ice cream. These are sold with the tickets; there is no separate concession stand for these items. Attorney Cox discusses lighting and tells the Board there is no lighting associated with the outdoor recreation facility and there is no lighting proposed on the challenge course. She explains that the existing light poles are used by Heritage Museums & Gardens for their overflow parking. The applicant will willingly accept that the parking lights will not be used by the Adventure Park during operating hours. Lot coverage, including the maintenance building, is 1.6%. Attorney Cox tells the Board the closest structure is 113 feet from the Shawme Road property line. She outlines her reasoning why the tree platforms are not “structures” but “elements.” Off street parking is screened from Shawme Road by natural vegetation which will continue to grow and fill in. Designated spaces are not within 100 feet of Shawme Road or Pocasset Road. The one bench and picnic tables collectively seat 92 people.

Attorney Cox discusses the criteria of a Special Permit. A sound study was conducted and submitted. A traffic evaluation study was also submitted. Attorney Cox presents the results of each study. She explains that there are virtually no changes to the land at the Adventure Park. Preservation of the environment is critical to the experience. Attorney Cox outlines why issuance of a Special Permit will not result in substantial harm or derogation. This is an allowed use in the R1 District. Specifically, there is no overcrowding of the land; lot coverage is less than 2%. There is no measurable negative impact on real estate property values. To support this statement Attorney Cox references the April 2019 Impact Analysis prepared and submitted by Cape Cod & Islands Appraisal Group. Attorney Cox addresses the Doctrine of Collateral Estoppel. She tells the Board the question before them tonight is not a question of standing but rather will there be substantial harm to the neighborhood or derogation from the intent of the By-Law. The Doctrine of Collateral Estoppel does not apply. Attorney Cox goes on to present how the Impact Analysis was prepared and the conclusions it made. She tells the Board the overall conclusion is that the data and analysis showed no negative influences created in the immediate community neighborhood or on market values of the contiguous residential properties to the Adventure Park.

Attorney Cox's summary includes the Adventure Park creates no substantial harm or detriment, creates no substantial traffic impact, is beneficial to the economy, is a community amenity and there is no impact on housing. She tells the Board the Special Permit should be granted. This is a less intensive use than could be permitted in this district. The applicant is willing to accept anticipated conditions of approval including that the project has to be constructed and operated in accordance with the plans submitted and that there be no lighting.

Mr. Neeven opens the matter up to the Board for comments. Mr. Jensen addresses Attorney Cox by saying that he has read 520 CMR and asks her to provide clarification on the number of elements, ropes, platforms and zip-lines. He asks Attorney Cox how she is defining “elements.” Mr. Jensen also asks how many US ID device nameplates are on the Adventure Park. Bahman Azarm introduces himself. He explains that generally when working with the state to get a license the state provides one license to operate. There are many elements that make up each course, or trail. Mr. Azarm explains that people enter the course at the starting platform and get off at the end. Each course can be made up of 10 to 15 elements. Mr. Azarm confirms for Mr. Jensen

that his contention is that it is one amusement device. Mr. Killion has questions regarding the property valuation analysis. He asks why different regressions were used. Attorney Cox says she does not have the answer believes this is what the appraiser had the data for and tells Mr. Killion she will inquire. Mr. Killion asks Mr. Brides if he believes the elements are structures or not structures in terms of setback. Mr. Brides states that he believes the platforms in the trees constitute structures. A dialogue ensues as it relates to this matter. Attorney Cox states that she disagrees with Mr. Brides. Mr. Jensen asks for the height of the ropes course. Mr. Azarm confirms that nothing exceeds 35 feet. Mr. Killion addresses traffic and how it affects the overall attendance at the facility. Patrick Dunford, VHB Traffic Engineer, introduces himself to the Board. Mr. Dunford discusses traffic volume for the Adventure Park compared to traffic volume for Heritage Museums & Gardens. There are no further questions from the Board.

Mr. Neeven opens the matter up to the public for comment. He asks that public comment be concise. The following people spoke:

Peter Mello, Esq.

Attorney Mello introduces himself to the Board and tells them he represents Highview Condominium Association. He tells the Board the applicant has provided them with irrelevant materials and that it is not a challenge course but an amusement park. Attorney Mello discusses why this use constitutes an amusement park, and refers to amusement devices and elements in his description. Attorney Mello tells the Board that the use satisfies the State's definition of an amusement park as each element can be classified as one amusement device. Attorney Mello references a white paper that expressly recognizes that aerial outdoor adventure parks could constitute amusement parks. Attorney Mello requests that the Board deny the Special Permit on that basis alone. Attorney Mello states for purposes of argument only that even if the Aerial Adventure Park did not constitute an amusement park, the Board would still be required to deny the Special Permit application as it couldn't plausibly be defined as a small scale community recreation facility. Attorney Mello discusses the meaning of small scale and community in relation to the Protective Zoning By-Law. Mr. Killion asks Attorney Mello what he is basing the scale on; is it the acreage or the size of the facility. Attorney Mello describes the amount of visitors the use attracts and refers to the definitions in the Zoning By-Law that classify small scale uses as tennis courts, croquet courts and ball fields. Mr. Killion interjects that a ball field is of similar scale to the proposed use and would attract just as many people. He continues to explain that the definition of an outdoor recreation facility references rock-climbing walls, which is much more closely related to a challenge course than an amusement park by any stretch. Attorney Mello believes the Board should go back and ascertain what Town Meeting meant when it approved this By-Law. Mr. Neeven asks Attorney Mello to start wrapping up his argument as there are many people here tonight who would like to speak. Attorney Mello returns to the State's definition of an amusement park. Mr. Jensen explains to Attorney Mello that this Board must abide by the definitions and regulations set forth in the local Zoning By-Laws. If something is not provided for at the local level, then they go to the state regulations and so forth. Mr. Jensen continues to explain that a challenge course and an amusement park are licensed differently under the State of Massachusetts regulations. Attorney Mello states that the courts have already decided that there is no bona fide curriculum associated with this use that would classify it as a challenge course; this is a self-guided exercise. Attorney Mello continues to discuss the violations

of the Zoning By-Law. Mr. Neeven asks Attorney Mello to stop to allow others to speak. Attorney Mello asks to make one more point, a critical point. He states that there cannot be structures within one hundred feet of the property boundary line and that the tree platforms are structures. Attorney Mello references Mr. Brides' earlier determination that the platforms are considered structures under the Town's Zoning By-Laws, which is consistent with Mr. Spiro's previous determination and Heritage's own lawyers acknowledge that it would be difficult to argue to the contrary. Attorney Mello argues that the Board cannot approve the Special Permit on these grounds. Mr. Neeven begins to ask Attorney Mello to step down from the podium. Attorney Mello interjects that the tree platforms require a variance. Mr. Neeven continues to ask Attorney Mello to stop his presentation and allow others to speak. Attorney Mello begins a new point. Mr. Neeven hits the gavel, and informs Attorney Mello that he has never had to use it before. Mr. Neeven states that his time is up and that he has to move on, but he can return at the end with additional comments.

Dick Harries, 10 Morgan Trail

Mr. Harries' reads from the Barnstable Superior Court decision. Mr. Harries references Section 1100 of the Town of Sandwich By-Law.

Carlo DiPersio, 11 Morgan Trail

Mr. DiPersio tells the Board he called the Mass. Department of Public Safety who told him that they do not issue licenses for ropes courses. Mr. DiPersio states the Mass. Department of Public Safety told him that Heritage has a "challenge" course not a "ropes" course. He goes on to reference and discuss the Barnstable Superior Court decision. He talks about the traffic study and offers his personal observations. He steps the Board through the handout he has provided. Mr. DiPersio states the character of the neighborhood has been altered. He tells Board members they are taking the summer away from us; they are taking the neighborhood away from us for money.

Jennifer Bouchard, 24 Pine Street

Ms. Bouchard explains that she and her family moved to Pine Street in 2015. They were drawn to the neighborhood by the beautiful tree-lined street and the walkability to downtown Sandwich and Heritage. She wonders if others knew not to buy in this neighborhood because they had known about the Adventure Park. Ms. Bouchard discusses the traffic study and asks the Board to consider if it is the appropriate metric to be using to measure the quality of life in this neighborhood. She believes that it is not and that traffic is a safety concern for children as well as a hazard for all pedestrians. Public safety along Pine, Grove and Shawme should be of greater concern. Ms. Bouchard challenges the applicant's presentation that their commercial venture is an asset to the community.

Robert Aldrich, 6 Pine Street

Mr. Aldrich tells the Board he has lived at this address since 2002. He has watched the growth of the neighborhood as a whole. Heritage has been a considerate neighbor. Mr. Aldrich says he hasn't noticed any negative impact in his area.

Kate Aldrich, 6 Pine Street

Ms. Aldrich offers her support to re-open the Adventure Park. Heritage has always included and encouraged residents to visit. Ms. Aldrich believes the Adventure Park is an asset to the Town and neighborhood.

Anna Romano, 1 Faunce Mountain Road

Ms. Romano has been a resident since 2018. Ms. Romano tells the Board she is an avid walker. Her walks include Pine Street, Grove Street and Jonathan Lane. Ms. Romano tells the Board she feels as comfortable and safe walking these streets as she did walking rural roads of western Massachusetts. She finds the traffic light and not an impediment to her safety. Ms. Romano believes the Adventure Park would be an asset to the community.

Shirley Davies, 26 Turtle Cove Road

Ms. Davies reads aloud two letters of support:

- Ruth Provost, 16 Grove Street. Ms. Provost has lived on Grove Street for 45 years. She supports the Adventure Park and believes it is an asset to the community. She says it is not an amusement park nor has it impacted traffic on the road in any noticeable way or harmed property values.
- Julie and Mark Peterson (no address provided.) Julie and Mark own and manage Sandwich Pizza. A considerable number of people have eaten at Sandwich Pizza after having visited the climb park. Many people in Sandwich live off the tourist industry; in this economy it is critical to stay competitive. The Peterson's letter says they hope the park is re-instated.

Chris Richards – 1 Hill Wood Way

Mr. Richards tells the Board he is a resident of Sandwich and also a member of the Heritage Board of Directors. The aerial park is consistent with Heritage's mission. Mr. Richards tells the Board his children's experiences at the Adventure Park is the highlight of their year. This park might not have been an educational facility under the legal definition but it does impart educational value. Heritage wants to draw more visitors but to characterize it as a commercial enterprise is somewhat misleading. To stay relevant, Heritage needs to appeal to a broader audience. Heritage will abide any conditions imposed by the Special Permit.

Janice Semprini, resident of Highview Condo Association

Ms. Semprini tells the Board that she does not share the opinion of others within the complex. She supports Heritage Museums & Gardens and the Adventure Park.

Jenny Govoni, 3 Morgan Trail

Ms. Govoni is a resident of Sandwich. She tells the Board that at no time has the Adventure Park traffic been any kind of a detriment to family life or the ability to ride their bikes. Ms. Govoni tells the Board that home values have continued to go up. As an

educator, she has sent students to the Adventure Park for very little to no cost. After a climb people are spending their dollars supporting local businesses.

Kara Peterson, 6 Seneca Lane

Ms. Peterson tells the Board her company visited the Adventure Park for teambuilding. They received reduced rates for the Adventure Park as well as for Heritage Museums & Gardens. Parking was not crowded. Ms. Peterson said the Adventure Park experience was quiet, peaceful and serene. Ms. Peterson believes the Adventure Park is an asset.

Todd Hermann, 10 Fairfield Drive

The Adventure Park is an incredible experience. Mr. Hermann believes this is the kind of economic development we need to have more of in Sandwich.

Kevin Aldrich, 6 Pine Street

Mr. Aldrich tells the Board the Adventure Park is a life-changing experience. Friends who worked for the Adventure Park are now out of jobs. From his perspective there has been no change in traffic.

Jonathan Shaw, 3 Jarves Street

Mr. Shaw tells the Board he has seen the evolution of Heritage. The Adventure Park is part of the evolution of the facility. He recounts his visit to the Adventure Park with his grandsons as a meaningful experience.

Gordon MacNeill, 46 Highview Drive

Mr. MacNeill tells the Board he was employed by the Adventure Park for the first two seasons. The youth learn trust, focus, different climbing strategies as well as how to support their peers and friends. He tells the Board that he hopes they consider the park an investment in the youth of Cape Cod.

Carl Johansen (no address provided)

Mr. Johansen tells the Board there is no question about the value of a ropes challenge course. He references the Barnstable Court Decision. Mr. Johansen goes on to say that this is a commercial enterprise being conducted on a non-profit situation. He believes that payment in lieu of taxes is a primary goal to make sure that the Town, going forward, has an opportunity to grow from the added money that we are going to collect from property taxes. Mr. Johansen encourages the Board to look at what the judge said when making your final decision.

Melissa Zawadzki, 24 Pierre Vernier Drive

Ms. Zawadzki tells the Board she is speaking on behalf of herself and other young families. There aren't a lot of places on the Cape that bridge family members of all ages. It provides bonding experiences. We need something like this to benefit all of us.

Keith Lewison, 17 Windswept Drive

Mr. Lewison's property abuts the Shawme Crowell State Forest. He takes daily walks through the forest and the roads surrounding Heritage. Mr. Lewison says that he sees no difference in the character of the neighborhood from the time the Adventure Park was opened. He believes this is a value to our community, our kids and our families.

Eric Small, 6 Jonathan Lane

Mr. Small tells the Board he doesn't believe anyone in the group opposing the Adventure Park is negative towards Heritage Plantation. We generally have enjoyed Heritage. He tells the Board the people who he is aligned with in opposing the zip-line is not opposed to zip lines but is opposed to where it is located. Mr. Small references the court case and the Town's By-Laws. He tells the Board that the court ruled that the aerial park is permanently enjoined from operation at this location. Mr. Small goes on to say that the approval of this application to remove the harm and to overrule the court's ruling, in his opinion, is more than what this Board is charged with.

Jonathan Fitch, 24 Grove Street

Mr. Fitch tells the Board this is a wonderful facility but it's in the wrong place. He says he is speaking in opposition to the Special Permit based on what the rules are. Mr. Fitch's comments include asking the Board if yurts are compatible with the houses on Pine Street, Jonathan Lane or Grove Street. He states that the parking is not screened. Mr. Fitch asks the Board to apply some rules, e.g. is this a small scale community outdoor facility. He discusses the effect on the neighborhood, the diminution of property values and the increase in traffic. He suggests that an element can also be a structure. Mr. Fitch asks the Board to look at the application and determine if it needs to be referred to the Cape Cod Commission. Mr. Fitch concludes by saying he hopes the Board will deny the Special Permit.

Kevin Sareault, 12 Old Farm Lane

Mr. Sareault discusses his positive experience visiting the Adventure Park. Children were encouraging one another and there is value in that. It's the kind of thing we would want in our Town.

David Trapasso, 31 Pine Street

Mr. Trapasso moved to Sandwich in 2015. He describes Pine Street as relatively narrow, quiet and quaint. Mr. Trapasso tells the Board Heritage is a wonderful facility and he has had a membership in the past. He explains that traffic has increased on the street and driving has become dangerous. The street is a public safety concern.

Mary Grabowski, 8 Songbird Circle

Ms. Grabowski discusses the rate of childhood disorders and mental health. The challenge course is a positive experience for these individuals.

Kevin Murphy (no address provided)

Mr. Murphy says the case study is the process of justice. The park is a wonderful place but we need to follow the process. Don't be overwhelmed by the emotion.

Peter Mello, Esq.

Mr. Neeven requests Attorney Mello limit his comments to five minutes. Attorney Mello thanks the Board for letting him speak for a second time and states that support for the Adventure Park as a child friendly facility and as something that helps local business is all fine but flat irrelevant. He tells the Board they need to look at the law. The Board cannot issue a Special Permit because it is an amusement park and certainly not a small scale community recreation facility. Attorney Mello states that even if you could classify this as a small scale community recreation facility it does not meet the criteria of the Special Permit; it has structures in the setbacks, it is not sufficiently screened. All of these legal by-laws prohibit you from issuing the Special Permit. Attorney Mello discusses elements of the Judge's ruling with regards to the detriment on the neighborhood. Attorney Mello discusses the history of the proposal. Attorney Mello promises the Board that if they issue a determination that is inconsistent with the court's decision it will be very susceptible to challenge on appeal. Attorney Mello discusses Zoning By-Law violations and the lack of a Certificate of Appropriateness for this project. Mr. Jensen asks Attorney Mello if he is referring to what previously happened during the Appeal of Decision of Building Inspector. Attorney Mello states why this is relevant; it is an existing By-Law violation. Mr. Jensen states that this is not the purview of the Board. Attorney Mello explains that he is soon to be President of the Mass Municipal Lawyers Association, he is not anti-zoning boards but this is one of the most preposterous things he has ever seen. Attorney Mello continues to discuss the Certificate of Appropriateness. Mr. Killion states that this is the Zoning Board, not the Historic Commission, please stick with the zoning issues. Mr. Neeven asks Attorney Mello to start wrapping up. Attorney Mello states that if the Board is at all inclined to grant the Special Permit it must undertake the exercise of going through the chart he prepared and submitted. Attorney Mello thanks the Board for their time.

Karrie Studley – address inaudible

Ms. Studley tells the Board her experience with the Adventure Park was wonderful. Her daughters enjoyed it so much they worked there and loved their jobs. It's not just for kids but adults, too. It is a learning experience. Ms. Studley believes it would be a shame not to re-issue the permit and reopen the Adventure Park.

Richard Mignon (no address provided)

Mr. Mignon is a volunteer at Heritage who drives along Pine Street several times a week and has never noticed any traffic issues. He tells the Board there is a beach at the end of his street and the traffic gets difficult during the summer season. If you live in Sandwich you know traffic gets difficult. Mr. Mignon speaks of intelligence of the heart and says that it builds human qualities that aren't intellectual. He tells the Board it would be a tragedy to see this park go away because it is one of the few places where this occurs and this kind of education is crucial.

Carlo DiPersio, 11 Morgan Trail

Mr. DiPersio asks for confirmation that this Board is looking at whether or not to issue a Special Permit to operate an adventure park only. Mr. Neeven says this is correct; this Board has nothing to do with a building permit. Mr. Jensen adds that neither Historical, Finance, nor taxes come before this Board. Mr. DiPersio suggests a site 4 ½ miles away that would be the ideal location for the Adventure Park. Mr. Neeven explains that this is not before the Board's purview.

Tom McDonald, Crestview Drive

Mr. McDonald tells the Board he has followed the development of this matter over the years and finds it somewhat compelling that the Zoning Board of Appeals has more jurisdiction and more authority than the Superior Court Judge. Mr. Killion explains that they do not. A spirited discussion ensues. Mr. McDonald discusses the Superior Court Decision. He tells the Board he finds it offensive that Heritage decided not to appeal this decision. Mr. McDonald is concerned the Town is being left open to a suit and asks if the Board has received legal guidance on this matter. Mr. Neeven acknowledges that Town Counsel is present tonight. Mr. McDonald asks if anything anchored to the ground is considered a structure. Mr. Brides explains that the original permit was voided and a new permit application would have to be submitted which would include structure. Mr. McDonald reiterates that it is upsetting that this Board feels they have the ability to overrule the Superior Court judgement.

Ursula Price, 63 Highview Drive

Ms. Price refers to the Impact Analysis and says that it states impact analysis of proximity to recreational facilities is entirely based on comparison to homes near schools and athletic fields or playgrounds which are totally different. Ms. Price asks why these were selected to compare the Aerial Adventure Park which is designed to attract an influx of visitors from outside of the community.

There are no further comments from the public.

Eliza Cox, Esq.

Attorney Cox tells the Board she would like to respond to the public's comments, some of which include: She says they have submitted the Special Permit application and they are following the process required. Attorney Cox references the court decision and states the matter before the Board now is different than what was before the court. The Board has an obligation to review the application in accordance with the criteria which is under the Zoning By-Law. She discusses taxes and tells the Board all required taxes have been paid. She discusses traffic speed and says no evidence has been submitted that cars going too fast have been associated with the Adventure Park. Attorney Cox talks about the platforms in the trees and whether they are structures. She states this was previously reviewed by the prior Building Commissioner who testified at trial that they were not structures under the Zoning By-Law and issued the Building Permit. If they had been determined to be structures they would have had to be 30 feet back from the property line. Attorney Cox tells the Board they think this was the right determination. They are not located on a fixed location on the ground nor are they

attached to something on the ground. They sit on wedges which lean against a tree. She talks about screening for parking. If the Board feels additional screening needs to be planted along the frontage they are happy to have that discussion. Old Kings Highway is not within this Board's jurisdiction. In summary, Attorney Cox describes the studies which were submitted with the application. She tells the Board she believes they meet the definition of an outdoor recreational use and falls within the definition of a recreational facility. She tells the Board they want to work with them and the Town to get this project approved.

The Board requests that Heather Ross attend the Board's next meeting to discuss the real estate market appraisal.

Mr. Van Buskirk asks Attorney Cox if the platforms had to be relocated to meet current setbacks can that be done? Mr. Azarm answers by saying they believe the platforms meet the current definition but it is possible as long as there are trees available.

Mr. Van Buskirk asks Town Counsel to clarify the permanently enjoined ruling. Does it have anything to do with this application? Attorney Laughlin says that, in her opinion, it does not. She explains that a preliminary injunction was sought first and denied by the court. A permanent injunction was ultimately issued but was only with respect to that particular appeal which was the question of the Dover Amendment. The permanent injunction, in her opinion, does not preclude the Board from considering the Special Permit.

Mr. Van Buskirk motions to continue the Public Hearing to May 28, 2019. Mr. Jensen seconds. The vote is unanimous. Mr. Neeven announces the Public Hearing will take place on Tuesday, May 28, 2019, in this same location, at 6 p.m.

For clarification purposes, Mr. Neeven explains that there is more information the Board would like the applicant to provide. The Board will not be deliberating tonight. They will hear from the real estate appraiser at the next meeting and get more questions answered. Most likely the Public Hearing will be closed at the next meeting and deliberations will take place. Because the Public Hearing remains open documents from the public are still being accepted.

Board Discussion

There are no items to discuss.

Deliberations

There are no items to deliberate.

Other Matters Not Reasonably Anticipated

There are no matters to discuss.

Adjournment

Mr. Jensen motions to adjourn. Mr. Van Buskirk seconds. The vote is unanimous. The meeting adjourns at 9:10 p.m.

Respectfully Submitted,


Maureen McCabe

Supporting Documents:

1. Special Permit Application and Cover Letter (3 pages)
2. Staff Memo dated May 9, 2019 (6 pages)
3. Special Permit Addendum (6 pages)
4. Pictures (4 pictures)
5. Zoning Board of Appeals Permitting Plan for 0 Pocasset Street and 0 Shawme Road prepared by Horsley Witten Group, dated April 2019 (1 locus map)
6. Zoning Board of Appeals Permitting Plan for 0 Pocasset Street and 0 Shawme Road prepared by Horsley Witten Group, dated April 2019 (1 Site Layout Plan)
7. Letters of Support (36 letters)
8. Memo to Christopher Neeven, Chair from Sam Jensen, Assistant Town Engineer re: Petition 19-04, Application for a Special Permit, 0 Pocasset Road & 0 Shawme Road, Parcels 1 & 2 on Assessors Map 37, dated May 13, 2019 (1 page)
9. Email to Maureen McCabe from David Mason re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated May 9, 2019 (1 page)
10. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated May 1, 2019 (1 page)
11. Memo to Christopher Neeven, Chairman Board of Appeals from Joshua Wrigley, Assistant Director, Department of Natural Resources re: Conservation Commission comments for Special Permit #19-04 for the addresses located at 0 Pocasset Road & 0 Shawme Road, Heritage Museums, Adventure Park, dated April 26, 2019 (1 page)
12. Email to Maureen McCabe from Sean Miller re: Request for Comment: 0 Pocasset Road & 0 Shawme Road, Map #37, Parcels 1&2, dated April 29, 2019 (1 page)
13. Eliza Cox, Esq.'s PowerPoint Presentation dated May 14, 2019 (21 pages, including title slide)
14. Heritage Special Permit for Aerial Adventure Park by Carlo M. DiPersio, dated May 14, 2019 (6 pages)
15. Protective Zoning By-Law November 2017, ZBA May Meeting (4 pages, including cover)
16. Letter in Opposition from Peter Mello w/exhibits, dated May 8, 2019 (125 pages)
17. Checklist for Board of Appeals' Review of the Adventure Park at Heritage Museums and Gardens, LLC's Application for Special Permit submitted by Peter Mello, Esq. (6 pages)
18. Email to Paul Spiro from Melissa Houle re: CO update for Heritage Adventure Park, dated May 5, 2015 w/attachments: Commonwealth of Massachusetts, Department of Public Safety, License to Operate Challenge Course, License #: MA-662, dated May 1, 2015 page 1 of 2; and Commonwealth of Massachusetts, Department of Public Safety,

License to Operate Challenge Course, License #: MA-662, dated May 1, 2015 page 2 of 2 (3 pages)

19. Town of Sandwich Protective Zoning By-Law, November 2018 (90 pages, including November 2017 Zoning Map)
20. April 2019 Impact Analysis prepared by Cape Cod & Islands Appraisal Group, LLP (26 pages)
21. VHB Traffic Evaluation dated April 23, 2019 (217 pages)
22. HMMH Sound Study dated December 10, 2015 (14 pages)
23. Barnstable Superior Court Decision (28 pages)
24. Ruth Provost letter (note: letter read aloud but not provided to the Board)
25. Julie and Mark Peterson letter (note: letter read aloud but not provided to the Board)